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Person To Contact: _____, ID. # _____

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Legend

Taxpayer =

Parent =

State A =

Year A =

Year B =

Number C =

Number D =

$$E =$$
$$F =$$

Number G =

Number H =

Entity I =

Dear

This is in response to the letter submitted by Taxpayer requesting a ruling that it is taxable as an insurance company under § 831 of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Taxpayer was incorporated in Year A in State A as a general business corporation. Taxpayer is not recognized as an insurance company in State A. All of the stock of Taxpayer is owned 100 percent by Parent. For calendar tax Year B, Taxpayer's business focuses on providing motorists with roadside assistance and can be divided into issuing "risk-based contracts" and "non-risk-based contracts." Roadside assistance includes towing, flat tire changes, battery jump starts, fuel or coolant delivery, and lockout services. The assistance is performed by participants of a Taxpayer-created network of towing operators and locksmiths. The contractual arrangements between Taxpayer and these assistance providers are on a fee-for-service basis. The towing operators and the locksmiths who perform the actual roadside assistance are independent contractors, not employees of Company.

Taxpayer has in-force approximately Number D "risk-based" contracts which account for approximately Number C percent of Taxpayer's revenue. As described more fully below, Taxpayer acquired this risk-based roadside assistance business through: (1) soliciting members, (2) having membership benefits offered through arrangements with several major credit card issuers, (3) having benefits attached to automobile extended vehicle service contracts whereby there is provided (in a risk-based contract) a Taxpayer roadside assistance benefit and (4) having contracts with an unrelated property and casualty insurance company whereby Taxpayer agrees to provide participating policyholders with roadside assistance upon the occurrence of a fortuitous event necessitating the assistance.

With respect to the direct solicitation of customers, Taxpayer has been able to attract a number of customers to its E roadside assistance program. Taxpayer issues roadside assistance contracts to these customers in exchange for a fee paid directly by these customers. This fee is Taxpayer's total compensation for providing the assistance upon the occurrence of a fortuitous event necessitating the assistance.

With respect to the solicitation of customers through credit card issuers, Taxpayer has engaged with a number of travel clubs associated with credit card issuers. Members of the issuers' travel clubs are charged a fixed fee on a monthly, quarterly or annual basis which is remitted to Taxpayer as the total consideration for a contract obligating

Taxpayer to provide the members roadside assistance upon the occurrence of a fortuitous event necessitating the assistance.

With respect to solicitation of customers through automobile extended vehicle service contracts, Taxpayer provides emergency roadside services to purchasers of vehicle extended service contracts which include roadside assistance as an ancillary benefit; along with the vehicle extended service contract the purchaser is provided a “member agreement” which can be cancelled independent of the vehicle service contract. The vehicle extended service contracts are primarily offered by F for a coverage term ranging from Number G to Number H months. The automobile dealer selling these vehicle extended service contracts receives consideration from the purchaser of the contract, which includes the ancillary roadside assistance benefit. Each month the dealer remits to F its allocable share of the consideration received from the purchaser and F in turn remits to Taxpayer the portion of the consideration allocable to the risk of incurring roadside assistance. The result is that Taxpayer is obligated to provide roadside assistance to these purchasers upon the occurrence of a fortuitous event necessitating the assistance; the fee received from F represents Taxpayer’s total compensation for providing benefits to the vehicles of the covered members.

With respect to the contracts with unrelated property and casualty insurance companies, Taxpayer partners with participating companies to provide participating policyholders an agreement under which Taxpayer will provide roadside assistance to these policyholders upon the occurrence of a fortuitous event necessitating the assistance. The property and casualty company remits to Taxpayer a fee for each participating policyholder, which represents Taxpayer’s total compensation for providing benefits to the participating policyholders.

In addition to this risk-based business, for Year B Taxpayer also engaged in non-risk based, service contract business. Illustrative of this business is Taxpayer’s contract with unrelated Entity I in which Taxpayer provided roadside services, primarily by having Taxpayer’s network tow operators transport Entity I’s disabled fleet vehicles from the breakdown location to the Entity I assigned repair facility. Taxpayer would bill Entity I subsequent to the performance of the towing (or other related services) based on the quantity of the services performed.

During Year B, Taxpayer provided to its obligees certain de minimus incidental services and benefits such as maps and other related travel information, and eligibility for certain discounts from unrelated retail merchants. Certain of these services and benefits produce revenue for Taxpayer; others require Taxpayer to incur an expense to provide the service and benefit.

None of the information received suggests that Taxpayer is engaged in any activity which is not integral to the risk-based business or the non-risk-based business as described in this letter ruling.

For calendar tax Year B, a majority, Number C percent, of Taxpayer's revenue, is sourced to Taxpayer's risk-based business.

REQUESTED RULING

Taxpayer requests a ruling that for Year B it qualifies as an insurance company taxable under § 831.

LAW AND ANALYSIS

Section 831(a) provides that taxes, computed as provided in § 11, are imposed for each taxable year on the taxable income of each insurance company other than a life insurance company. Section 831(c) provides that, for purposes of § 831, the term "insurance company" has the meaning given to such term by § 816(a). Under § 816(a), the term "insurance company" means "any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies."

Neither the Code nor the regulations define the terms "insurance" or "insurance contract" in the context of property and casualty insurance. The Supreme Court of the United States has explained that in order for an arrangement to constitute insurance for federal income tax purposes, both risk shifting and risk distribution must be present. Helvering v. LeGierse, 312 U.S. 531 (1941). The risk transferred must be risk of economic loss. Allied Fidelity Corp. v. Commissioner, 572 F.2d 1190, 1193 (7th Cir. 1978). The risk must contemplate the fortuitous occurrence of a stated contingency, Commissioner v. Treganowan, 183 F.2d 288, 290-291 (2d Cir. 1950), and must not be merely an investment or business risk. Rev. Rul. 2007-47, 2007-2 C.B. 127. In addition, the arrangement must constitute insurance in the commonly accepted sense. See, e.g., Ocean Drilling & Exploration Co. v. United States, 988 F.2d 1135, 1153 (Fed. Cir. 1993); AMERCO, Inc. v. Commissioner, 979 F.2d 162 (9th Cir. 1992).

Taxpayer's risk-based contracts are aleatory contracts under which Taxpayer, for a fixed price, is obligated to indemnify the purchasers for economic losses arising from fortuitous events requiring emergency roadside assistance during the contract period. (In this connection, it should be emphasized that Taxpayer does not provide this assistance directly but rather through a network of independent service providers.) By accepting a very large number (viz., Number D) of unrelated, independent, homogeneous risk-based roadside assistance contracts, Taxpayer has distributed the risk of loss under the contracts. These contracts constitute insurance for Federal income tax purposes.

Considering the totality of Taxpayer's business, it appears that more than half of the business done during Year B is issuing insurance or annuity contracts or reinsuring risks underwritten by insurance companies.

RULING

Accordingly, based solely on the information received and representations made, for Year B, Company is taxable an insurance company under § 831.

No opinion is expressed on the application of any other section of the Code or the Income Tax Regulations to any of the facts described herein.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the Federal income tax return which it applies.

Pursuant to an authorization on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

JOHN E. GLOVER
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)